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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 25, and 52

[FAC 2005-58; FAR Case 2010-018; Item II; Docket 2010-0018, Sequence 1]

RIN 9000-AL91

Federal Acquisition Regulation; Representation Regarding Export of Sensitive Technology to Iran

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to add a representation to implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran.

DATES: Effective Date: **[INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia Davis, Procurement Analyst, at 202-219-0202, for clarification of

content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-58, FAR Case 2010-018.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 76 FR 68028 on November 2, 2011, to add a representation to implement section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. One respondent submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comment in the development of the final rule. There were no significant changes in the final rule as a result of the one public comment.

Comment: The respondent pointed out that the introductory text at FAR 25.703-1, Definitions, should refer to definitions used in the "section" rather than "subpart."

Response: The correction has been made.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because this rule will only have an impact on an offeror that is exporting sensitive technology to Iran. Domestic entities are

generally prohibited from engaging in activity that would cause them to be subject to the procurement bans described in this rule due to current restrictions on trade with Iran (see, e.g., Department of the Treasury Office of Foreign Assets Control regulations at 31 CFR part 560).

For the definition of "small business," the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: "(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor."

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 25, and 52

Government procurement.

Dated: April 11, 2012.

Laura Auletta,
Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

INTERIM RULE ADOPTED AS FINAL WITH CHANGES

Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52, which was published in the Federal Register at 76 FR 68028, November 2, 2011, is adopted as final with the following changes:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 25.703-1 by revising the introductory text to read as follows:

25.703-1 Definitions.

As used in this section—

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[BILLING CODE 6820-EP]

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